

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BERNELL WAYNE TILLER,

Plaintiff,

v.

ST JOSEPH HOSPITAL et al.,

Defendants.

CASE NO. C13-6066 BHS-JRC

REPORT AND RECOMMENDATION

NOTED FOR:  
APRIL 4, 2014

The District Court referred this 42 U.S.C. §1983 civil rights matter to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636 (b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiff failed to file an amended complaint after the Court ordered him to do so (Dkt. 7). Further, mail sent to plaintiff has been returned because plaintiff did not keep the Court apprized of his current address (Dkt. 8, 9, and 10). Accordingly, the Court recommends that the District Court dismiss this action without prejudice. The authority for the dismissal is Fed. R. Civ. P. 41(b) and Local Rule 41(b)(2).

Fed. R. Civ. P. 41(b) states:

1 If the plaintiff fails to prosecute or to comply with these rules or a court order, a  
 2 defendant may move to dismiss the action or any claim against it. Unless the  
 3 dismissal order states otherwise, a dismissal under this subdivision (b) and any  
 4 dismissal not under this rule--except one for lack of jurisdiction, improper venue,  
 5 or failure to join a party under Rule 19--operates as an adjudication on the merits.

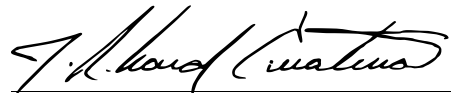
6 A dismissal pursuant to Fed. R. Civ. P. 41(b) is, therefore, normally dismissal on the  
 7 merits. However, the record reflects that plaintiff may not have gotten the Court's order because  
 8 the order was returned as undeliverable (Dkt. 10). The Court, therefore, recommends dismissing  
 9 this action without prejudice.

10 Local Rule 41(b)(2) states:

11 A party proceeding pro se shall keep the court and opposing parties advised as to  
 12 his or her current mailing address and, if electronically filing or receiving notices  
 13 electronically, his or her current email address. If mail directed to a pro se  
 14 plaintiff by the clerk is returned by the Postal Service, or if email is returned by  
 15 the internet service provider, and if such plaintiff fails to notify the court and  
 16 opposing parties within 60 days thereafter of his or her current mailing or email  
 17 address, the court may dismiss the action without prejudice for failure to  
 18 prosecute.

19 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
 20 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
 21 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
 22 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
 23 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on April  
 24 4, 2014, as noted in the caption.

Dated this 11<sup>th</sup> day of March, 2014.



J. Richard Creatura  
 United States Magistrate Judge